

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Revision of Part 22 and )  
Part 90 of the Commission' ) WT Docket No. 96-18  
Rules to Facilitate Future )  
Development of Paging Systems )  
 )  
Implementation of Section 309(j) )  
of the Communications Act -- ) PP Docket No. 93-253  
Competitive Bidding )

To: The Commission

REPLY COMMENTS OF  
PREFERRED NETWORKS, INC.

Preferred Networks, Inc. ("PNI"), pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC") or ("Commission") and by counsel, respectfully submitS its reply to the comments filed in response to the proposals contained in the Notice of Proposed Rule Making ("Notice") adopted February 8, 1996 by the Commission in the above-styled proceeding.<sup>1</sup>

PNI has participated in this proceeding because of the significant adverse affect the actions of the Commission have and will have on the conduct of

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<sup>1</sup> Notice of Proposed Rule Making (FCC 96-52), 10 FCC Rcd \_\_\_\_ (1996). PNI filed comments on March 1, 1996 and March 11, 1996 in regards to the Commission's interim licensing proposals. PNI urged the Commission to rescind immediately the suspension on the acceptance of applications for the non-exclusive Private Carrier Paging lower band channels. PNI also filed comments on March 18, 1996 in response to the substantive proposals contained in the Notice.

PNI's and other paging licensees' operation on the non-exclusive PCP lower band channels. Unlike the 929 MHz PCP channels which the Commission transitioned from shared to exclusive use and which were lightly encumbered, the lower band PCP channels are heavily utilized, not only for commercial for-profit purposes, but also for internal, not-for-profit purposes.<sup>2</sup> Contrary to the position of Telebeeper of New Mexico,<sup>3</sup> the most that the Commission can achieve in these lower PCP bands is "shared exclusivity," and such exclusivity will take time to attain.

**A. The Commission is not mandated to alter the technical and operational rules of non-exclusive PCP channels to be identical to the rules governing Part 22 and Part 90 exclusive paging channels.**

The Commission initiated the instant rule making proceeding to examine its paging regulations in light of the statutory objective of regulatory symmetry for all Commercial Mobile Radio Services ("CMRS") established in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").<sup>4</sup> The Budget Act requires the Commission to alter the rules governing substantially similar services for

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<sup>2</sup> Commercial Mobile Radio Service ("CMRS") classification was not extended to private internal paging systems. Based on the shared nature of the lower band non-exclusive PCP channels, any rule changes will apply equally to these non-CMRS systems.

<sup>3</sup> Comments of Telebeeper of New Mexico at p. 2 (Telebeeper urges the Commission to convert the non-exclusive PCP channels to exclusive use for only commercial operators and require re-location of licensees using the frequencies for internal paging systems to "vacant" business radio service channels.)

<sup>4</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993).

purposes of achieving regulatory symmetry only as it "may be necessary and practical."<sup>5</sup> As the Commission previously has recognized, not all substantially similar services must have identical technical and operational rules, especially if the imposition of such identical rules would require carriers to reconfigure their services in ways that could adversely affect their ability to compete.<sup>6</sup> The Commission further stated that it will not alter rules when the differences in rules applicable to competing services have a reasonable basis unrelated to competitive considerations or because changing the rules would be impractical.<sup>7</sup>

PNI, therefore, submits that the Commission is not required to amend the rules pertaining to the non-exclusive PCP channels in conjunction with its evaluation of the rule changes for Part 22 CCP channels and the exclusive 929 MHz PCP channels. The licensing history of the non-exclusive PCP channels creates a number of complex issues which the Commission need not address in its proposals to amend the technical and operational rules governing Part 22 Common Carrier Paging ("CCP") channels and the exclusive 929 MHz PCP channels to be consistent with each other and consistent with other CMRS rules, such as narrowband PCS. As reflected in the comments submitted by

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<sup>5</sup> Budget Act, § 6002(d)(3)(B).

<sup>6</sup> Third Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd 7988, para. 79 (1994).

<sup>7</sup> Id.

other paging companies operating on non-exclusive PCP channels,<sup>8</sup> the Commission's treatment of the non-exclusive PCP channels in a manner similar to the exclusive channels is ill-advised, impractical, and has a significant adverse affect on PCP carriers ability to compete with carriers authorized the exclusive channels.

The Commission previously declined to consider amendment of the non-exclusive PCP channels in connection with modifying the licensing, technical and operational rules of the exclusive PCP channels. In the prior proceeding, the Commission found the issues were far more complex and required a separate proceeding in which to consider the transition of the non-exclusive PCP channels to exclusive licensing.<sup>9</sup> PNI submits that the Commission was correct in its determination then, and should immediately terminate any consideration of the non-exclusive PCP channels immediately and initiate a separate proceeding to consider the issues relating to future licensing and operational rules for the non-exclusive channels. The application "freeze" on these channels should be concurrently lifted and no new "freeze" imposed should another proceeding be initiated.

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<sup>8</sup> See Comments of A + Network; Teletouch Licenses, Inc.; ProNet Inc.; and the Paging Licensees.

<sup>9</sup> See Report and Order, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-903 MHz, PR Docket No. 93-35, 8 FCC Rcd 8318, 8331 (1993).

The rules which the Commission has proposed to impose on the exclusive paging channels are simply unworkable in the non-exclusive PCP spectrum. For example, the Commission proposed to permit all exclusive paging licensees the ability to make minor modifications, which do not expand the service/interference contours of a system, without notification to the Commission. The non-exclusive PCP channel landscape is much too cluttered to allow such permissive modifications.

In a large metropolitan market, there may be more than three or four licensees on a lower band PCP channel with licensed transmitters co-located with, or within a mile, of other co-channel licensees. Thus, each licensee does not have full use of the channel within any given geographic area like a licensee with exclusive use of a frequency. In the shared environment, co-channel licensees being able to make minor modifications without notice to licensees which are sharing the frequency would result in chaos. PNI concurs with Teletouch Licenses, Inc. and the Paging Licensees that the Commission must continue to process applications filed by incumbent licensees in order to protect other incumbent co-channel licensees.

**B. The Commission should place a cap on the number of licensees which may share a non-exclusive PCP channel.**

PNI is a proponent of "shared exclusivity" by the imposition of a cap on the number of licensees which may share a frequency. A cap on the licensing of these shared licenses must be imposed to ensure that the quality of service is not further degraded. Moreover, PNI submits that once the Commission

establishes the baseline set of licensees for each of the non-exclusive PCP channel, a type of exclusivity may be achieved among such licensees which may ultimately permit the Commission to transition to a method of licensing that will reduce the Commission's regulatory and administrative burden. However, reaching this goal will require time and money.

PNI, therefore, agrees with A + Network that additional costs should not be imposed on those licensees which are willing to take the time and invest the money to make these frequencies operate efficiently. Licensing these shared channels by auction may create speculation on these frequencies which may artificially raise the cost to ultimately consolidate these shared frequencies. The Commission, therefore, should allow existing licensees, which have the most motivation, to assist it in "cleaning up" the licensing landscape and not eliminate such incentive by imposing a "tax" on such volunteers. Consolidation by existing licensees will be facilitated by placing a cap on the licensing of the non-exclusive PCP frequencies.

Further, the imposition of the application "freeze" for the non-exclusive PCP channels may result in the applications mills targeting the 157.740 MHz frequency when the Commission determines that the non-exclusive PCP channels are unsuitable for exclusive geographic licensing and competitive bidding processes and lifts the "freeze" on the non-exclusive PCP channels. Prior to the "freeze" being imposed, PNI was not aware of any significant licensing activity by application mills on the 157.74 MHz channel. Those

applications which may have been filed by applications mills had no effect on PNI because of the shared nature of the spectrum. Unlike the exclusive bands, the filing of an application at Site A by Applicant X for Frequency M does not preclude Applicant Y from concurrently licensing Frequency M at Site A. Because construction and operation rarely results from the application mill licenses, operational paging companies were unaffected by the presence of such licenses.

However, the Commission may have aided such mills in creating an impression that value exists for these non-exclusive PCP frequencies. Accordingly, PNI's proposal to place a cap on the number of licensees on a channel provides a means to exclude such application mill filings without significantly impacting operational companies with existing, constructed systems from continuing to conduct their day-to-day business.

**C. The Commission should mandate sharing arrangements between co-channel licensees within a defined geographic area.**

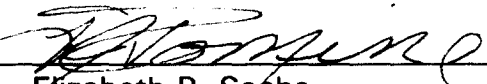
Finally, in addition to a cap on licensing of shared channels, the Commission must impose mandated sharing arrangements for incumbent licensees operating on the lower band PCP channels. PNI joins A + Network in urging the Commission to impose mandatory sharing requirements for licensees operating on the non-exclusive PCP channels. Without the Commission's involvement in instituting a form of interference protection for incumbent licensees, PNI cannot envision alternative means to transition of the channels from non-exclusive use to a shared exclusive use.

**D. Conclusion**

PNI reiterates its request that the Commission take immediate action to rescind the suspension of acceptance of applications for the non-exclusive PCP channels. This action has an anti-competitive affect on the marketplace. Further, PNI urges the Commission to severe its considerations of changes to the non-exclusive PCP channels from this proceeding. Because of the differences in the current licensing and operation rules between the exclusive paging channels and the non-exclusive paging channels, the Commission is not mandated to concurrently alter the rules governing the non-exclusive paging channels with its modifications to the rules governing the exclusive paging channels.

Respectfully submitted,

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